



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-132251-11]

RIN 1545-BK51

Relief from Joint and Several Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to relief from joint and several tax liability under section 6015 of the Internal Revenue Code (Code) and relief from the Federal income tax liability resulting from the operation of state community property laws under section 66. The proposed regulations provide guidance to taxpayers on when and how to request relief under sections 66 and 6015. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT**

IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-132251-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132251-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC; or sent

electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-132251-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mark Shurtliff at (202) 622-4910; concerning submissions of comments and requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 6013(a) of the Code permits taxpayers who are husband and wife to file a joint Federal income tax return. Married individuals who choose to file a joint income tax return are each jointly and severally liable under section 6013(d)(3) for the tax arising from that return, which, pursuant to sections 6601(e)(1) and 6665(a)(2), includes any additions to tax, additional amounts, penalties, and interest. Because the liability is joint and several, the IRS is authorized to collect the entire amount from either spouse, without regard to which spouse the items of income, deduction, credit, or basis that gave rise to the liability are attributable.

Section 6015 was enacted in 1998 to provide relief from joint and several liability in certain circumstances. Section 6015 sets forth three bases for relief from joint and several liability. First, section 6015(b) allows a taxpayer to elect relief from understatements of tax attributable to erroneous items of the other spouse if the taxpayer had no reason to know of the understatement and, taking into account all the facts and circumstances, it is inequitable to hold the taxpayer liable. Second, section 6015(c) allows a taxpayer who is divorced or legally separated from, or no longer living with, the spouse or former spouse with whom the joint return was filed to elect to

allocate a deficiency (or a portion of a deficiency) to the other spouse, as if the spouses had filed separate tax returns. Third, section 6015(f) provides that a taxpayer may request, under “procedures prescribed by the Secretary,” relief from a tax understatement or underpayment when the taxpayer does not qualify for relief under the other two subsections and it would be inequitable to hold the taxpayer liable considering all the facts and circumstances.

Section 6015(h) directs the Treasury Department and the IRS to prescribe such regulations as are necessary to carry out the provisions of section 6015. The Treasury Department and the IRS exercised that authority by promulgating regulations under section 6015 on July 18, 2002 (TD 9003, 67 FR 47278). Sections 1.6015-2, 1.6015-3, and 1.6015-4 of the final regulations provide guidance on the bases for relief in section 6015(b), (c), and (f), respectively. Section 1.6015-5 provides rules on the time and manner to request section 6015 relief.

By their terms, paragraphs (b) and (c) of section 6015 impose a two-year deadline for a taxpayer to elect the application of either subsection. Under the deadline, a taxpayer must make the election no later than two years after the date of the IRS’s first collection activity with respect to the taxpayer. See section 6015(b)(1)(E) and (c)(3)(B). In contrast, paragraph (f) of section 6015 does not contain an explicit deadline to request relief. In accordance with the authority in section 6015(f) to prescribe procedures for the administration of equitable relief, the Treasury Department and the IRS, beginning in 1998, prescribed in published guidance a two-year deadline to request equitable relief under section 6015(f) to be consistent with the statutory time limit to claim relief under section 6015(b) and (c). The two-year deadline to request

equitable relief was first prescribed in Notice 98-61 (1998-2 CB 758 (December 21, 1998)) (see §601.601(d)(2)(ii)(b) of this chapter). The two-year deadline was reiterated in Rev. Proc. 2000-15 (2000-1 CB 447), which was superseded by Rev. Proc. 2003-61 (2003-2 CB 296), and ultimately adopted in the regulations under section 6015, which were issued on July 18, 2002, as §1.6015-5(b)(1).

Besides establishing when and how to request relief from joint and several liability, §1.6015-5 also defines key terms, such as “collection activity,” sets forth examples illustrating the time and manner provisions, and explains the effect of a final administrative determination.

In Lantz v. Commissioner, 132 T.C. 131 (2009), the Tax Court considered for the first time whether the two-year deadline to request equitable relief was valid. After analyzing the issue under the standard for judicial review of an agency regulation, the Tax Court held the two-year deadline for equitable relief in §1.6015-5(b)(1) invalid. The Lantz decision was reversed on appeal by the United States Court of Appeals for the Seventh Circuit in an opinion upholding the validity of the deadline to request equitable relief. Lantz v. Commissioner, 607 F.3d 479 (7th Cir. 2010). After Lantz, the Tax Court continued to find the two-year deadline invalid in cases not appealable to the Seventh Circuit but the deadline was upheld again in Mannella v. Commissioner, 631 F.3d 115 (3d Cir. 2011), and Jones v. Commissioner, 642 F.3d 459 (4th Cir. 2011).

Notwithstanding the validity of the regulation setting the two-year deadline, the Treasury Department and the IRS considered whether to retain the deadline and determined, in the interest of tax administration, that the time period to request equitable relief under section 6015(f) should be extended. As announced in Notice 2011-70

(2011-32 IRB 135 (Aug. 8, 2011)), the two-year deadline no longer applies to requests for equitable relief under section 6015(f). In place of the prior two-year deadline, Notice 2011-70 provides that, to be considered for equitable relief, a request must be filed with the IRS within the period of limitation for collection of tax in section 6502 or, for any credit or refund of tax, within the period of limitation in section 6511. Notice 2011-70 explains that the regulations under section 6015 will be revised to reflect the change. These proposed regulations reflect the changes made by Notice 2011-70. Notice 2011-70 has no effect on the two-year deadline to elect relief under section 6015(b) (and §1.6015-2) or section 6015(c) (and §1.6015-3).

Notice 2011-70 specifies transitional rules that apply until the Treasury Department and the IRS amend the regulations under section 6015. Under the transitional rules, the two-year deadline does not apply to any request for equitable relief filed on or after July 25, 2011 (the date Notice 2011-70 was issued) or any request already filed and pending with the IRS as of that date. The transitional rules provide that the IRS will consider these current and future requests for equitable relief if they were filed within the applicable limitation period under section 6502 or 6511. As for past requests for equitable relief—requests that the IRS denied as untimely under the two-year deadline—the notice allows the individuals who filed those requests to reapply for equitable relief, unless the individual litigated the denial or the denial included a determination that the individual was not entitled to equitable relief on the merits. In addition, Notice 2011-70 provides separate rules for claiming equitable relief with respect to litigated cases.

A similar rule is added to §1.66-4 for claims for equitable relief under section 66(c). Section 66(c) provides two avenues for married taxpayers who do not file a joint Federal income tax return in a community property state to request relief from the operation of the state community property laws. Under state law, each spouse generally is responsible for the tax on one-half of all the community income for the year. Traditional relief under section 66(c) allows the requesting spouse to avoid liability for tax on community income of which the requesting spouse did not know and had no reason to know. If a requesting spouse does not satisfy the requirements for traditional relief, the Secretary may grant equitable relief. The IRS uses the same procedures for determining eligibility for equitable relief under section 66(c) as it does for equitable relief under section 6015(f). As a result, it is appropriate for the IRS to use the same timing rules for consideration of requests for equitable relief, whether under section 66(c) or section 6015(f).

Explanation of Provisions

The Treasury Department and the IRS propose to amend the provisions of §1.6015-5 on the time and manner for requesting relief from joint and several liability under section 6015. A similar rule is added to §1.66-4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

1. Requesting Relief as Part of Collection Due Process

The proposed regulations revise §1.6015-5(a) to reflect that a requesting spouse (defined in §1.6015-1(h)(1)) may elect the application of section 6015(b) [§1.6015-2] or section 6015(c) [§1.6015-3] or request equitable relief under section 6015(f) [§1.6015-4]

as part of the collection due process (CDP) hearing procedures under sections 6320 and 6330. A corresponding change is made to §1.6015-5(c)(1) to clarify that, although section 6015 relief may be raised in a CDP proceeding, a requesting spouse may not request section 6015 relief in the course of a CDP hearing if the requesting spouse previously requested section 6015 relief and the IRS ruled on that request by issuing a final administrative determination. These proposed regulations do not change existing CDP hearing procedures. See §301.6330-1(e)(2). Rather, these changes make the regulations under section 6015 consistent with the regulations under section 6330.

2. Time to Request Relief

Section 1.6015-5(b) of the proposed regulations retains the two-year deadline, measured from the date of the first collection activity, to elect the application of §1.6015-2 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(b)) or 1.6015-3 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(c)). In accordance with Notice 2011-70, the deadline is removed for a request for equitable relief under §1.6015-4 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(f)) and replaced with a requirement that a request for equitable relief must be filed with the IRS within the period of limitation in section 6502 for collection of tax or the period of limitation in section 6511 for credit or refund of tax, as applicable to the specific request. A similar rule is added to §1.66-4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

Under section 6502(a)(1), the period of limitation on collection of tax is normally ten years after the date of assessment of the tax, although it may be extended by other

provisions of the Code. Under section 6511(a), the period of limitation to claim a credit or refund of tax is generally the later of three years after the date a tax return for the taxable period was filed or two years after the date the tax was paid. If no return was filed, the two-year period applies.

Section 1.6015-5(b)(2) of the proposed regulations explains that if a requesting spouse files a request for equitable relief under §1.6015-4 within the limitation period on collection of tax, the IRS will consider the request, but any relief in the form of a tax credit or refund depends on whether the limitation period for credit or refund was also open as of the date the claim for relief was filed and the other requirements relating to credits or refunds are satisfied. In cases in which the limitation period for credit or refund happens to be the longer of the two periods and is open when a request for equitable relief is filed, the request can be considered for a potential refund or credit of any amounts collected or otherwise paid by the requesting spouse during the applicable look-back period of section 6511(b)(2), even if the collection period is closed.

If a request for equitable relief is filed after the expiration of the limitation period for collection of a joint tax liability, the IRS is barred from collecting any remaining unpaid tax from the requesting spouse. Similarly, if a request for equitable relief under §1.6015-4 is filed after the expiration of the limitation period for a credit or refund of tax, section 6511(b)(1) bars the IRS from allowing, and a taxpayer from receiving, a credit or refund. The proposed regulations provide, therefore, that the IRS will not consider an individual's request to be equitably relieved from a tax that is no longer legally collectible.

3. Collection Activity

The proposed regulations clarify what constitutes collection activity for purposes of starting the two-year deadline that continues to apply to §§1.6015-2 and 1.6015-3.

A notice of intent to levy and right to request a CDP hearing (section 6330 notice) is a type of collection activity that starts the two-year period applicable to applications to elect relief under §§1.6015-2 and 1.6015-3. The proposed regulations at §1.6015-5(b)(3)(ii) clarify that the two-year period will start irrespective of a requesting spouse's actual receipt of the section 6330 notice, if the notice was sent by certified or registered mail to the requesting spouse's last known address. This clarification is consistent with the holding in Mannella v. Commissioner, 132 T.C. 196 (2009), rev'd on other grounds, 631 F.3d 115 (3d Cir. 2011).

4. Examples

Section 1.6015-5 in its current form contains several examples intended to illustrate how the timing rules for requesting relief under section 6015 operate. The proposed regulations update these examples to reflect the proposed changes to the timing rules. Thus, Example 1 is revised to explicitly limit it to elections under §1.6015-2 or 1.6015-3. Example 2 illustrates the operation of both the two-year deadline for purposes of §§1.6015-2 and 1.6015-3 and the periods of limitation that apply to equitable relief requests under §1.6015-4, including a situation in which the requesting spouse will still be considered for relief for unpaid amounts even though the limitation period for credit or refund had expired when the request was filed as discussed in §1.6015-5(b)(2). Example 3 is principally intended to illustrate that collection activity against a nonrequesting spouse (defined in §1.6015-1(h)(2)) does not begin the time in which a requesting spouse must elect the application of §1.6015-2 or 1.6015-3.

Example 4 illustrates the rule of §1.6015-5(c)(3)(i) that a section 6330 notice sent to a requesting spouse's last known address, even if not actually received by the requesting spouse, is a collection activity for purposes of the timing rules, but the issuance of the notice, or the time between the mailing of the notice and the filing of a request for relief, does not affect the IRS's consideration of equitable relief under §1.6015-4 as no two-year deadline applies. Example 5 illustrates the timing rules in §1.6015-5(b)(2) under which if a requesting spouse has paid some or all of a joint tax liability, or if the IRS has collected all or a part of the liability from a requesting spouse, the requesting spouse will be considered for equitable relief under §1.6015-4 if the requesting spouse filed for relief within the limitation period for a credit or refund of tax, even though the limitation period for collection of tax was expired when the request was filed. The example further illustrates that in a case of payments or collection activity over time, a requesting spouse is eligible for a credit or refund only for amounts of tax for which the period of limitation allows a credit or refund as of when the request for relief was filed. The last example, Example 6, builds off of Example 5 and illustrates a situation in which the IRS will not consider a request for equitable relief under §1.6015-4 because both the limitation period for a credit or refund of tax and the limitation period for collection of tax had expired as of the date the claim for relief was filed.

5. Reconsideration and Effect of a Final Administrative Determination

The proposed regulations also revise §1.6015-5(c), which prescribes the effect of a final administrative determination. Under §1.6015-5(c)(1), a requesting spouse generally is entitled to submit only one request for relief under section 6015 from a joint tax liability (except as provided in §1.6015-1(h)(5)), and the IRS will issue only one final

administrative determination. The proposed regulations clarify in §1.6015-5(c)(1) that after a final administrative determination, a requesting spouse may not, even under the procedures for a CDP hearing, again request relief under section 6015 with respect to the same joint tax liability.

Consistent with the general restriction, but to provide flexibility within that framework, the IRS has developed procedures in the Internal Revenue Manual (Chapter 25.15.17 (Rev. 03/08/2013)) to reconsider a final administrative determination if a requesting spouse submits additional information not previously submitted and considered and the requesting spouse did not petition the Tax Court from the prior final administrative determination. If the requesting spouse did petition the Tax Court, then the requesting spouse is not eligible for reconsideration unless the Tax Court case was dismissed for lack of jurisdiction. A reconsideration process allows for relief in situations where a requesting spouse was unable to initially provide the information, such as the requesting spouse not fully understanding how to file a complete request for relief under section 6015. The reconsideration process, however, does not replace the IRS's final administrative determination for purposes of determining whether Tax Court review is available or whether a Tax Court petition was timely filed. A request for reconsideration is not a qualifying election ("the first timely claim for relief from joint and several liability for the tax year for which relief is sought") under §1.6015-2 or 1.6015-3, or request under §1.6015-4, for purposes of §1.6015-1(h)(5), and does not trigger the restrictions on collection pursuant to section 6015(e)(1)(B) or the suspension of the collection period of limitation under section 6015(e)(2). A reconsideration letter (formerly Letter 4277C and currently either Letter 5186C, Letter 5187C, or Letter 5188C)) is not a final

determination letter for purposes of section 6015(e) and §1.6015-7. Accordingly, a requesting spouse who receives a reconsideration letter may not petition the Tax Court to challenge a denial of relief following the IRS's reconsideration even if the requesting spouse provided new information not previously considered. The proposed regulations add a new provision to §1.6015-5(c) acknowledging the reconsideration process but also providing that the reconsideration letter is not the IRS's final determination and is not subject to review by the Tax Court.

The general restriction in the regulations to one request for relief under section 6015 per tax liability and one final administrative determination of that request does not prohibit a requesting spouse from reapplying for equitable relief under §1.6015-4 pursuant to the terms of Notice 2011-70 if the requesting spouse's request for relief under §1.6015-4 was denied solely for being untimely and that denial was not litigated. The notice allows individuals who filed requests for equitable relief that were denied by the IRS solely on the basis of the two-year deadline and were not litigated to reapply to the IRS for equitable relief. A Form 8857, "Request for Innocent Spouse Relief," or substitute written statement, signed under the penalties of perjury, filed as a reapplication for equitable relief under Notice 2011-70 is not considered a second request, and the resulting determination will be the final administrative determination for purposes of the regulations. A reapplication under Notice 2011-70 is not a reconsideration under the IRS's reconsideration process, and a denial of equitable relief on reapplication may be timely petitioned to the Tax Court for review.

Proposed Effective/Applicability Date

Except as provided below, these proposed regulations are effective as of the date that final regulations are published in the **Federal Register**. For proposed dates of applicability, see §1.6015-9.

Notice 2011-70 announced that the Treasury Department and the IRS intended to amend the regulations under section 6015 to remove the requirement that taxpayers request equitable relief under section 6015(f) and §1.6015-4 within two years of the first collection activity. Under section 7805(b)(1)(C), the proposed regulations provide that §1.6015-5(b)(1) and (b)(2) will be effective as of July 25, 2011, the date that Notice 2011-70 was issued to the public.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS website at <http://www.irs.gov>.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments submitted by the public will be made available for public inspection and copying at <http://www.regulations.gov> or upon request. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Stuart Murray and Mark Shurtliff of the Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.66-4 also issued under 26 U.S.C. 66(c). * * *

Section 1.6015-5 also issued under 26 U.S.C. 6015(h). * * *

Section 1.6015-9 also issued under 26 U.S.C. 6015(h). * * *

Par. 2 In §1.66-4, paragraph (j)(2)(ii) is revised to read as follows:

§1.66-4 Request for relief from the Federal income tax liability resulting from the operation of community property law.

* * * * *

(j) * * *

(2) * * *

(ii) Equitable relief. The earliest time for submitting a request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section is the date the requesting spouse receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability with regard to that year (as described in paragraph (j)(2)(iii) of this section). A request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid is properly submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed. To request equitable relief under §1.66-4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief," or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the tax liability. If a requesting spouse files a request for equitable relief under §1.66-4 within the period of limitation on collection of tax, the IRS will consider the request for equitable relief, but the requesting spouse will be eligible for a

credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502 nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief.

* * * * *

Par. 3. Section 1.66-5 is revised to read as follows:

§1.66-5 Effective /applicability date.

Except for §1.66-4(j)(2)(ii), sections 1.66-1 through 1.66-4 are applicable on July 10, 2003. Section 1.66-4(j)(2)(ii) applies to any request for relief filed on or after July 25, 2011 (the date that Notice 2011-70, 2011-32 IRB, was issued to the public).

Par. 4. Section 1.6015-0 is amended as follows:

1. In §1.6015-5, revising the entry for paragraph (a) as new entry for paragraph (a)(1) and adding a new entry for paragraph (a)(2); entries for paragraphs (b)(1) through (b)(5) are revised; entries for paragraphs (b)(2)(i) and (b)(2)(ii) are removed; and new entries are added for paragraphs (b)(3)(i), (b)(3)(ii), (b)(6), (c)(1), (c)(2), and (c)(3).
2. Section 1.6015-9 heading is revised.

The additions and revisions read as follows:

§1.6015-0 Table of contents.

* * * * *

§1.6015-5 Time and manner for requesting relief.

- (a) Requesting relief.
 - (1) In general.
 - (2) Requesting relief as part of a collection due process hearing.
- (b) * * *
 - (1) Relief other than equitable relief.
 - (2) Equitable relief.
 - (3) Definitions.
 - (i) Collection activity.
 - (ii) Section 6330 notice.
 - (4) Requests for relief made before commencement of collection activity.
 - (5) Examples.
 - (6) Premature requests for relief.
- (c) * * *
 - (1) In general.
 - (2) Reconsideration process.
 - (3) Examples.

* * * * *

§1.6015-9 Effective/applicability date.

Par. 5. Section 1.6015-5 is amended to read as follows:

1. Paragraph (a) is amended by designating the introductory text as (a)(1), adding a new heading for paragraph (a)(1) introductory text, and adding new paragraph (a)(2).
2. Paragraph (b)(1) is revised.
3. Paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated as paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).
4. New paragraph (b)(2) is added.
5. Newly-designated paragraphs (b)(3)(ii), (b)(4), (b)(5), and (b)(6) are revised.

6. Paragraph (c)(1) is amended by adding a new sentence at the end of the paragraph.

7. Paragraph (c)(2) is redesignated as paragraph (c)(3) and revised and new paragraph (c)(2) is added.

The revisions and additions read as follows:

§1.6015-5 Time and manner for requesting relief.

(a) Requesting relief--(1) In general. * * *

(2) Requesting relief as part of a collection due process hearing. A requesting spouse may also elect the application of §1.6015-2 or 1.6015-3, or request equitable relief under §1.6015-4, pursuant to the collection due process (CDP) hearing procedures under sections 6320 and 6330, by attaching Form 8857, "Request for Innocent Spouse Relief," or an equivalent written statement to Form 12153, "Request for a Collection Due Process or Equivalent Hearing" (or other specified form).

(b) * * * (1) Relief other than equitable relief. To elect the application of §1.6015-2 or 1.6015-3, a requesting spouse must file Form 8857 or other similar statement with the IRS no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) Equitable relief. To request equitable relief under §1.6015-4, a requesting spouse must file Form 8857 or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the joint tax liability. If a requesting spouse files a request for equitable relief under §1.6015-4 within the period of limitation on collection of tax, the IRS will consider the request for equitable relief, but the

requesting spouse will be eligible for a credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502 nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief. See §1.6015-1(g).

(3) * * *

(ii) Section 6330 notice. A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the IRS's intent to levy and of their right to a CDP hearing. The mailing of a section 6330 notice by certified mail to the requesting spouse's last known address is sufficient to start the two-year period, described in paragraph (b)(1), regardless of whether the requesting spouse actually receives the notice.

(4) Requests for relief made before commencement of collection activity. Except as provided in paragraph (b)(6) of this section, an election under §1.6015-2 or 1.6015-3 or a request for equitable relief under §1.6015-4 may be made before any collection activity has commenced. For example, an election or request for equitable relief may be made in connection with an examination of a joint Federal income tax return or a

demand for payment, or pursuant to the CDP hearing procedures of section 6320 with respect to the filing of a Notice of Federal Tax Lien. A request for equitable relief under §1.6015-4 for a liability that is properly reported on a joint Federal income tax return but not paid with the return or by the due date for payment is properly submitted at any time after the return is filed.

(5) Examples. The following examples illustrate the rules of this paragraph (b):

Example 1. On January 12, 2009, the IRS mailed a section 6330 notice to H and W, by certified mail to their last known address, regarding their 2007 joint Federal income tax liability, which was the result of an understatement. The section 6330 notice was the first collection activity the IRS initiated against H and W to collect the 2007 joint liability. H and W did not request a CDP hearing in response to the section 6330 notice. On June 5, 2009, the IRS issued a levy on W's wages to W's employer. On July 10, 2009, the IRS issued a levy on H's wages to H's employer. To be considered for relief under §1.6015-2 or 1.6015-3, a Form 8857 or other request for relief must be filed on or before January 12, 2011, which is two years after the IRS sent the section 6330 notice. The two-year period for purposes of §§1.6015-2 and 1.6015-3 (not applicable to §1.6015-4) runs from the date the section 6330 notice was mailed and not from the date of the actual levy.

Example 2. On May 5, 2011, the IRS offset W's overpayment from W's 2010 separate Federal income tax return in the amount of \$2,000 to H and W's joint tax liability for 2009 of \$5,000, for which H and W filed a joint return on April 15, 2010. The offset is the first collection activity the IRS initiated against W to collect the 2009 joint liability. On October 3, 2013, W requests relief under section 6015. W's request is not timely under §§1.6015-2 and 1.6015-3 because the request was made more than two years after the IRS's first collection activity against W – the offset of W's overpayment from 2010. As to equitable relief under §1.6015-4, the period of limitation on collection is open when W files her request, and the request can be considered for equitable relief of the unpaid tax of \$3,000. W is not, however, eligible for any credit or refund of the \$2,000 amount that the IRS applied against H and W's 2009 joint liability, because the period of limitation on credit or refund of tax for 2009 is no longer open when W files her request for relief. Under section 6511(a), a credit or refund of tax must generally be claimed within three years after the filing date of a tax return for the tax year or two years after payment of the tax, whichever is later. Thus, the last day for W to claim a credit or refund of the \$2,000 amount was May 5, 2013, but her request for relief was not filed until October 3, 2013.

Example 3. On June 14, 2011, the IRS offset W's overpayment from her separate Federal income tax return for 2010 against H and W's joint liability for 2009, which was the result of an understatement. On July 5, 2012, the IRS offset H's

overpayment from his separate Federal income tax return for 2011 against H and W's joint liability for 2009. The offset is the first collection activity the IRS initiated against H to collect the 2009 joint liability. On November 25, 2013, H requests relief under section 6015 by filing Form 8857. H's request is timely. For purposes of §§1.6015-2 and 1.6015-3, the request was filed within two years of the IRS's first collection activity against H. The IRS's collection activity against W does not start the two-year period for H to request relief. Additionally, for purposes of §1.6015-4, the period of limitation on collection was open when H filed Form 8857, making him eligible for equitable relief from any unpaid liability for 2009, and the period of limitation on a credit or refund of tax for 2009 that was paid through the offset of H's overpayment for 2011 was likewise open when H filed his Form 8857.

Example 4. On April 15, 2008, H and W filed a joint Federal income tax return for tax year 2007. On October 1, 2009, additional liability was assessed against H and W as a result of income attributable to H being omitted from the return. H and W divorced soon after and, in late December 2009, W moved out of the family home without notifying the United States Postal Service or the IRS of her change of address until the end of January 2010. On January 15, 2010, the IRS mailed a section 6330 notice regarding H and W's 2007 joint Federal income tax liability to H and W's last known address (the address on H and W's joint Federal income tax return for tax year 2008, filed on April 15, 2009). H and W did not request a CDP hearing in response to the section 6330 notice. The IRS issued a levy on W's wages to W's employer on June 2, 2010. W filed Form 8857 requesting relief under section 6015 on May 15, 2012. Actual receipt of a section 6330 notice is not required to start the two-year period for purposes of §1.6015-2 or 1.6015-3, as long as the notice is sent to the taxpayer at the taxpayer's last known address by certified or registered mail. The two-year period, therefore, expired on January 15, 2012. Accordingly, W's request for relief is too late to be considered for any relief under §1.6015-2 or 1.6015-3, as the request was filed more than two years after the IRS sent the section 6330 notice. But because the period of limitation on collection was open (generally until October 1, 2019) when W filed the Form 8857, the IRS will consider whether W is entitled to equitable relief under §1.6015-4. Further, to the extent W's request for equitable relief under §1.6015-4 seeks a refund of tax W paid through the levy, W's Form 8857 is a timely claim for refund because it was filed within the applicable period of limitation for credit or refund of tax (in this case, two years from payment of the tax).

Example 5. H and W timely filed a joint Federal income tax return for tax year 1999. The IRS selected the 1999 return for examination and determined a deficiency in tax of \$10,000. The IRS assessed the tax on December 1, 2001. The taxpayers were divorced in 2005. On her separate Federal income tax return for tax year 2005, W reported an overpayment of \$2,500, which the IRS applied on May 3, 2006, to the joint liability for 1999. On her separate Federal income tax return for tax year 2009, W reported an overpayment of \$1,750, which the IRS applied on May 15, 2010, to the joint liability for 1999. On May 1, 2012, W filed with the IRS a Form 8857 requesting relief under section 6015. The IRS will not consider whether W is entitled to any relief under §1.6015-2 or 1.6015-3 because W's election is untimely as W's Form 8857 was filed

after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Although the collection period expired on December 1, 2011, the IRS will consider whether W is entitled to equitable relief under §1.6015-4 for tax year 1999 because W filed Form 8857 within the two-year period for claiming a credit or refund of tax under section 6511(a). Under section 6511(b)(2), the amount of any refund to which W might be entitled is limited to \$1,750 (the amount paid within the two years preceding the filing of W's Form 8857), and the \$2,500 collected in May 2006 is not available for refund.

Example 6. Assume the same facts as in Example 5, except that W's separate Federal income tax return for tax year 2009 did not report an overpayment, and there was no offset against the joint liability for 1999. The IRS will not consider whether W is entitled to any relief under §1.6015-2 or 1.6015-3 because W's election is untimely as W's Form 8857 was filed after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Further, as the collection period expired on December 1, 2011, and the period for claiming a credit or refund of tax under section 6511(a) expired on May 3, 2008, IRS will not consider whether W is entitled to equitable relief under §1.6015-4 for tax year 1999.

(6) Premature requests for relief. The IRS will not consider for relief under §§1.6015-2, 1.6015-3, or 1.6015-4 any election or request for relief from joint and several liability that is premature. A premature election or request for relief is an election or request, other than a request for relief for a liability that is properly reported on a joint Federal income tax return but not paid, that is filed for a tax year prior to the receipt of a notification of an examination or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. These notices or letters do not include notices issued pursuant to section 6223 relating to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership proceedings. A premature request for relief is not considered an election or request under § 1.6015-1(h)(5).

(c) ***--(1) *** A requesting spouse who receives a final administrative determination of relief under §1.6015-1 may not later elect the application of §1.6015-2 or 1.6015-3, or request equitable relief under §1.6015-4, including through the CDP hearing procedures under sections 6320 and 6330.

(2) Reconsideration process. Pursuant to §§1.6015-1(h)(5) and 1.6015-5(c)(1), a requesting spouse is generally entitled to submit only one request for relief and receive only one final administrative determination. Nevertheless, if a requesting spouse submits new information (including new facts, evidence, and arguments not previously considered) to the IRS after the IRS issues a final administrative determination to the requesting spouse, the IRS may reconsider the requesting spouse's request for relief under its established reconsideration process. A request for a reconsideration is not a qualifying election under §1.6015-2 or 1.6015-3, or a request under §1.6015-4, for purposes of §1.6015-1(h)(5). Any reconsideration of a final administrative determination by the IRS, and any notice or letter issued to the requesting spouse as a result of the reconsideration (such as Letter 4277C, Letter 5186C, Letter 5187C, or Letter 5188C), is not the IRS's final determination for purposes of section 6015(e) and is not subject to review by the Tax Court under section 6015(e) or §1.6015-7.

(3) Examples. The following examples illustrate the rules of this paragraph (c):

Example 1. In January 2008, W became a limited partner in partnership P, and in February 2009, she started her own business from which she earned \$100,000 of gross income for the taxable year 2009. H and W filed a joint Federal income tax return for 2009, on which they claimed \$20,000 in losses from the investment in P, and they omitted W's self-employment tax. In March 2011, the IRS commenced an examination under the provisions of the Code for TEFRA partnership proceedings and sent H and W a notice of the proceeding under section 6223(a)(1). In September 2011, the IRS opened an examination of H and W's 2009 joint return regarding the omitted self-employment tax. In 2012, H decides to pursue relief under section 6015. H may file a request for relief as to liability for self-employment tax because he has received a notification of an examination informing him of potential liability. A request for relief regarding the TEFRA partnership proceeding, however, is premature under paragraph (b)(6) of this section. H must wait until the IRS sends him a notice of computational adjustment or assesses any liability resulting from the TEFRA partnership proceeding before he may file a request for relief from that liability. An assessment of tax in the TEFRA partnership proceeding would be separate from an assessment for the self-

employment tax. Therefore, a subsequent request from H for relief from any liability resulting from the TEFRA partnership proceeding will not be precluded under this paragraph (c) by a previous request that H filed for relief from self-employment tax liability.

Example 2. On October 21, 2009, H filed a Form 8857 requesting relief under §§1.6015-2, 1.6015-3, and 1.6015-4 for an assessed deficiency relating to his joint income tax return for tax year 2004. On August 11, 2010, the IRS issued a final administrative determination denying H relief from the liability for tax year 2004. Under section 6015(e), H had until November 9, 2010, to file a petition to the Tax Court to challenge the denial of relief. H did not timely file a petition. On October 3, 2011, H submitted information with respect to his claim for relief for tax year 2004 that he did not previously provide. The IRS considered the new information pursuant to its established reconsideration process in IRM 25.15.17 (Rev. 03/08/2013) and informed H on January 25, 2012, via Letter 4277C that he was still not entitled to relief under any subsection of section 6015. Letter 4277C is not a final administrative determination and did not confer any new rights for H to file a petition to the Tax Court to challenge the final administrative determination issued on August 11, 2010, or the denial of relief from the IRS's reconsideration.

Par 6. Section 1.6015-9 is revised to read as follows:

§1.6015-9 Effective/applicability date.

(a) In general. Except as provided in paragraph (b) of this section, §§1.6015-0 through 1.6015-9 are applicable for all elections under §1.6015-2 or 1.6015-3 or any requests for relief under §1.6015-4 filed on or after July 18, 2002.

(b) Except for the rules for determining the timeliness of an election under §1.6015-2 or 1.6015-3, or a request for equitable relief under §1.6015-4 in paragraphs (b)(1) and (b)(2) of §1.6015-5, §1.6015-5 is applicable to any election under §1.6015-2 or 1.6015-3, or to any request for equitable relief under §1.6015-4, filed on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules for determining the timeliness of an election under §1.6015-2 or 1.6015-3, or a request for equitable relief under §1.6015-4 in paragraphs (b)(1) and (b)(2) of §1.6015-5 are applicable to any election under §1.6015-2 or 1.6015-3, or to any request for equitable relief under §1.6015-4, filed on or after July 25, 2011 (the date that Notice 2011-70, 2011-32 IRB 135, was issued to the public).

Beth Tucker
Deputy Commissioner for Operations Support.